IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5789 OF 2005

Hemant Shankar Kulkarni & Ors. ..Petitioners.

Vs.

The State of Maharashtra & Ors. ..Respondents.

....

Mr.N.V.Bandiwadekar for the Petitioners.

Mr.R.D.Rane, Government Pleader for Respondent Nos.1 and 2.

Mr.U.B.Nighot for Respondent Nos.3 and 4.

....

CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

23rd September, 2005.

P.C. :

1. Rule. Heard forthwith.

2. Petitioners 1 and 2 were initially appointed in Respondent No.4 school in the academic year 1999-00 on a clock hour basis. The management thereafter issued an advertisement in May 2000 for

posts of teachers in aided Divisions and unaided Divisions in the higher secondary classes. Petitioners 1 and 2 applied and came to be appointed from 12th June, 2000 as Shikshan Sevak. Respondent No.2, however, approved the appointment as full time teachers unaided till 30th April, 2001. The Petitioners were initially appointed against the posts which the management advertised as reserved based on the Government Resolution which provided for 52% of reservation in teaching posts. The appointment continues till date. Petitioner No.3 applied pursuant to the advertisement issued in May 2002 and was appointed along with Petitioners 1 and 2. Respondent No.2 approved these appointments as part-time teachers on unaided Divisions. Thereafter there have been advertisements issued pursuant to which the Petitioners applied and were selected and approval was granted on unaided Division. It is not necessary to refer to the intervening circumstances.

3. The Petitioners have filed this Petition to challenge the order dated 25th May, 2005 by Respondent No.2 refusing approval to the

appointment of the Petitioners as full time teachers in Respondent No.4 Junior College with a direction to Respondent No.2 to grant further approval to the Petitioners from 11th December, 2004 in Respondent No.4 Junior College as candidates belonging to open category. There is a further prayer that the Petitioners be treated as Assistant Teachers in Respondent No.4 Junior College from the date of the initial appointment and accordingly Respondent No.2 be directed to issue such approval with all consequential terminal benefits.

4. On behalf of Respondent Nos.3 and 4 a reply has been filed. In paragraph 7 it is set out that the reservation at 34% as laid down under the M.E.P.S. Rules has been considered by this Court and upheld and there are eight vacancies after applying the reservation at 34%. However, one teacher by the name Shri.Mahajan has been appointed in December 2004 and approval to his appointment is awaited. As such there are presently seven posts lying vacant.

5. Considering the above, it would be clear

that the Petitioners can be adjusted against the posts for open category. However, that would require Respondents 3 and 4 to make an application for approval to Respondent No.2 afresh on the basis as if there were regular vacancies when Petitioners 1, 2 and subsequently Petitioner No.3 were appointed. Considering the above the following directions :

Respondents 3 and 4 after working out the vacancies after excluding 34% of the posts which are reserved for backward class candidates to consider whether Petitioners 1 and 2 can be approved from the academic year 2000-01 or subsequent thereto against vacancies for open category candidates, to apply to Respondent No.2 for approval and similarly for Petitioner No.3 from the academic year 2002-03. Respondent No.2 after working out the reservation and if the appointment of the Petitioners is against open posts, to grant approval from the aforesaid dates or such other dates from which seats become available in the open category. Respondents 3 and 4 to submit the proposal to Respondent No.2 within eight weeks from today. Respondent No.2 within six weeks thereafter

to decide the same in accordance with law and intimate the same to the Petitioners and Respondents 3 and 4. If the approval is granted Respondent No.2 to release the salary grants from the date when the said posts have become aided.

Rule made absolute accordingly. There shall be no order as to cots.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)